

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 IO-13 FEA-01 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 EB-07 FRB-03 H-02 INR-07 INT-05 L-03

LAB-04 NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15

STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01

AF-08 ARA-06 EA-07 NEA-10 /137 W
----- 079230

R 301731Z JUL 76

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 1678

INFO ALL EC CAPITALS 2401

LIMITED OFFICIAL SE SECTION 1 OF 2 EC BRUSSELS 07548

E.O. 11652: N/A

TAGS: ETRD, GATT

SUBJECT: DUAL PRICING IN THE US PHOSPHATE INDUSTRY

REF PARIS 21828

1. BEGIN SUMMARY: THE COMMISSION HAS LODGED A COMPLAINT ALLEGING THAT AMERICAN PHOSPHATE ROCK PRODUCERS, BANDED TOGETHER IN A WEBB-POMERENE CORPORATION, ARE SELLING PHOSPHATE ROCK TO EUROPEAN PROCESSORS AT PRICES CONSIDERABLY IN EXCESS OF THOSE QUOTED FOR AMERICAN BUYERS. EUROPEAN PROCESSORS, WEAKENED BY THE DROUGHT AND BY THE LOW PRICES OF US SALES OF PHOSPHATE FERTILIZERS, HAVE IN SOME CASES SOLD OUT TO AMERICAN COMPANIES, WHICH ARE NOW SELLING THE ROCK TO THE AMERICAN OWNED EUROPEAN COMPANIES AT PRICES SIMILAR TO THOSE FOR US DOMESTIC USERS. END SUMMARY.

2. GALLAGHER, EC COMMISSION DIRECTOR GENERAL FOR EXTERNAL RELATIONS, CALLED US IN ON JULY 28 TO PRESENT AN AIDE-MEMOIRE ON ALLEGED RESTRICTIVE BUSINESS PRAC-
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TICES BY US PHOSPHATE PRODUCERS. THE TEXT OF THE

AIDE-MEMOIRE FOLLOWS:

1. BEGIN TEXT: THE COMMISSION OF THE EUROPEAN COMMUNITIES WISHES TO DRAW THE ATTENTION OF THE US AUTHORITIES TO THE SERIOUS DIFFICULTIES WHICH COMMUNITY MANUFACTURERS OF FERTILIZERS ARE EXPERIENCING AS A RESULT OF WHAT THEY ASSERT TO BE THE DUAL PRICING PRACTICES OF AMERICAN PRODUCERS OF PHOSPHATE ROCK AND PHOSPHATE-BASED FERTILIZERS.

BACKGROUND:

2. TOTALLY LACKING IN PHOSPHATE RESOURCES, EUROPEAN FERTILIZER PROCESSORS TRADITIONALLY IMPORT ABOUT 45 PERCENT OF THEIR NEEDS FROM MOROCCO, 25 PERCENT FROM THE UNITED STATES AND THE REST FROM SENEGAL AND THE SOVIET UNION. WORLD MARKET PRICES FOR THE RAW MATERIAL ARE HIGH NO MATTER WHAT THE SOURCE (THEY HAVE RISEN FOURFOLD SINCE THE ENRGY CRISIS).

3. EUROPEAN MANUFACTURERS OF PHOSPHATE FERTILIZERS HAVE RECENTLY COMPLAINED TO THEIR RESPECTIVE GOVERNMENTS AND TO THE COMMISSION ABOUT AMERICAN DUAL (DOMESTIC AND EXPORT) PRICING PRACTICES FOR PHOSPHATE ROCK AND ABOUT SALES OF AMERICAN PHOSPHATE-BASED FERTILIZERS BOTH IN EUROPE AND IN THIRD COUNTRIES AT PRICES SO LOW AS TO CONSTITUTE WHAT EUROPEAN MANUFACTUERS SEE AS UNFAIR COMPETITION.

4. THE US SUPPLIERS OF PHOSPHATE ROCK ARE ORGANIZED (UNDER THE WEBB-POMERENE ACT) AS AN EXPORT ASSOCIATION CALLED PHOSROCK, AND CHARGE THEIR EUROPEAN CUSTOMERS ON AVERAGE 33 DOLLARS A TON FOR THE PHOSPHATE ROCK, WHILST THEIR DOMESTIC PRICE TO US PROCESSORS IS AROUND 15 DOLLARS A TON. THE EUROPEAN INDUSTRIES ARE CONSEQUENTLY FINDING IT INCREASINGLY DIFFICULT TO COMPETE WITH FERTILIZERS OFFERED AT PRICES LOWER THAN EUROPEAN PRODUCTION COST BY US EXPORTERS (OPERATING FOR THE MOST PART THROUGH ANOTHER EXPORT ASSOCIATION CALLED LIMITED OFFICIAL USE

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PHOSCHEM).

5. US EXPORTS OF PHOSPHATE-BASED FERTILIZERS INTO THE EUROPEAN COMMUNITY ROSE FROM 296,400 SHORT TONS IN 1974 TO 730,400 SHORT TONS IN 1975.

6. BY CONTRAST, IN 1974/75, EUROPEAN PHOSPHATE PROCESSORS WERE OPERATING AT 63 PERCENT OF CAPACITY

(ABOUT 20 MIO TONS OF PHOSPHATE FERTILIZERS) AND
FACE A FURTHER SIGNIFICANT DROP IN THEIR PRODUCTION
FIGURES FOR 1975/76. A SUBSTANTIAL REDUCTION IN
THEIR HOME MARKET, LARGELY DUE TO DROUGHT, TOGETHER
WITH THE FALL IN THEIR EXPORT MARKETS, HAVE NOW
MADE THE EUROPEAN INDUSTRIES PARTICULARLY VULNER-
ABLE TO UNFAIR COMPETITION.

7. MORE RECENTLY, US PHOSPHATE PRODUCERS HAVE
SOUGHT TO PURSUE THEIR COMMERCIAL ADVANTAGE BY
SEEKING TO TAKE OVER A SHARE IN THE EUROPEAN
INDUSTRY, A STRATEGY IN WHICH THEIR DUAL PRICING
SYSTEM PLAYS AN IMPORTANT PART. ACCORDING TO
SOME PUBLIC REPORTS, EUROPEAN PHOSPHATE PROCESSORS
HAVE BEEN OFFERED RAW MATERIAL SUPPLIES AT THE
DOMESTIC AMERICAN PRICE OF 15 DOLLARS AS PART OF
A DEAL INVOLVING THE ACQUISITION, BY THE AMERICAN
PARTNER, OF A SIGNIFICANT SHARE IN THE OWNERSHIP.

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8. THE COMMISSION FINDS THIS AN ALARMING
INSTANCE OF DISCRIMINATORY CARTEL PRACTICE BEARING

ON INTERNATIONAL TRADE. THE CLOSURE OF FACTORIES AND INCREASED UNEMPLOYMENT WHICH HAVE RESULTED FROM THE AGGRESSIVE COMMERCIAL AND FINANCIAL POLICIES OF THE AMERICAN COMPANIES IN QUESTION IS NOW THE CAUSE OF SERIOUS CONCERN IN THE COMMUNITY. INDEED, THE IRISH GOVERNMENT HAS ALREADY NOTIFIED THE COMMISSION OF ITS INTENTION TO APPLY FOR AUTHORIZATION TO TAKE PROTECTIVE MEASURES IN ACCORDANCE WITH ARTICLE 135 OF THE TREATY CONCERNING IRELAND'S ACCESSION TO THE COMMUNITY.

CORRECTIVE ACTION:

9. THE COMMISSION HAS NOTED IN THE PAST VARIOUS STATEMENTS OF US POLICY ON RAW MATERIAL PRODUCER CARTELS AND NON-DISCRIMINATORY ACCESS TO RESOURCES WHICH SUGGEST THAT THE US AUTHORITIES WOULD BE WILLING TO TAKE CORRECTIVE ACTION IN CIRCUMSTANCES LIMITED OFFICIAL USE

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SUCH AS THOSE NOW PREVAILING IN THE PHOSPHATE INDUSTRY.

10. THE COMMISSION WOULD LIKE THE US AUTHORITIES TO UNDERTAKE SUCH ACTION, AND TO THIS END WOULD BE READY TO EXCHANGE INFORMATION WITH THE US AUTHORITIES AND TO COOPERATE MORE ACTIVELY IN ANY OTHER APPROPRIATE MANNER.

11. THE COMMISSION, FOR ITS PART, WISHES TO PUT AN END TO WHAT IT SEES AS A MOST SERIOUS SITUATION; HAS ACCORDINGLY ALREADY LAUNCHED A THOROUGH INVESTIGATION, IN CONFORMITY WITH THE COMMUNITY'S COMPETITION AND COMMERCIAL POLICIES; AND ALSO RESERVES THE OPTION OF SEEKING FOR (SIC) BILATERAL CONSULTATIONS WITH THE US IN THE GATT BY REFERENCE TO THE CONTRACTING PARTIES' DECISION OF 13 NOVEMBER 1960 ON RESTRICTIVE BUSINESS PRACTICES, AND OF TAKING ANY FURTHER ACTION WHICH MAY BE APPROPRIATE UNDER THE RELEVANT PROVISIONS OF THE GATT. END TEXT.

4. LOERKE, THE COMMISSION'S US DESK OFFICER WHO ACCOMPANIED GALLAGHER, SAID THAT THE COMMUNITY WAS PARTICULARLY CONCERNED IN VIEW OF THE FACT THAT THE IRISH GOVERNMENT IS NOW ATTEMPTING TO USE ARTICLE 135 OF THE TREATY OF ACCESSION TO ISOLATE ITSELF FROM THE REST OF THE COMMUNITY IN ORDER TO SAVE WHAT REMAINS OF ITS PHOSPHATE PROCESSING INDUSTRY. HE ADDED THAT THE EC DELEGATION IN WASHINGTON HAS ALREADY BEEN IN TOUCH WITH THE DEPARTMENT OF JUSTICE ANTI-TRUST DIVISION AND

HAD BEEN TOLD THAT THE ANTI-TRUST DIVISION WOULD WELCOME ANY FURTHER INFORMATION THAT THE COMMISSION MIGHT WISH TO FURNISH. WE TOLD LOERKE AND GALLAGHER THAT WE WOULD TRANSMIT THE COMMUNITY'S SUBMISSIGN TO WASHINGTON.

5. IN A PREVIOUS DISCUSSION LOERKE HAD TOLD US THAT THIS ISSUE HAS RISEN SEVERAL TIMES IN THE ARTICLE 113 COMMITTEE AND THAT AT LEAST THE IRISH WERE INTERESTED IN TAKING IL TO GATT UNDER GATT ARTICLE 19. HOWEVER, THE COMMISSION HAD DEFUSED THIS EFFORT. THE ITALIANS, LIMITED OFFICIAL USE

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FRENCH, BELGIANS AND GERMANS HAD ALSO SHOWN A DIRECT INTEREST IN THE CASE.HINTON

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